

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Charles P. Jones,)
Plaintiff,)
)
)
)
v.) Civil Action No. 06-129 KAJ
Thomas Carroll, David Pierce¹, David)
Holman², Alisha Profaci, Peter Forbes, and)
Joe Pomella,)
Defendants.

ANSWER TO COMPLAINT

State Defendants Carroll, Profaci, Forbes, and Pomella, by and through undersigned counsel, hereby answer the complaint as follows:

1. Admitted that Plaintiff is a prisoner in the custody of the Delaware Department of Correction and currently housed in the Delaware Correctional Center, Smyrna, Delaware. It is further admitted that Plaintiff was stabbed in the eye by another inmate on September 12, 2006.
2. Admitted that Defendants' Carroll, Profaci, Forbes, and Pomella, are employed with the Delaware Department of Correction.
3. State Defendants deny that they subjected or caused to be subjected, Plaintiff to the deprivation of an Eighth Amendment ban against cruel and unusual punishment for failure to protect him from an attack by another inmate on

¹ The claims against Deputy Warden Pierce have been dismissed pursuant to 28 U.S.C. § 1915(e) (2) (B) and § 1915A (b) (1).

² The claims against Security Chief Major Holman have been dismissed pursuant to 28 U.S.C. § 1915(e) (2) (B) and § 1915A (b) (1).

September 12, 2006.

4. Defendants Profaci, Forbes, and Pomella deny that they had knowledge of risks of assault against Plaintiff by his assailant.

RELIEF

5. It is specifically denied that Plaintiff is entitled to compensatory damages or punitive damages.
6. It is specifically denied that Plaintiff is entitled to any other relief.

AFFIRMATIVE DEFENSES

7. Plaintiff failed to state a claim upon which relief can be granted.
8. Plaintiff failed to exhaust his administrative remedies.
9. Plaintiff's suit for monetary damages against State Defendants as set forth in paragraph V is barred by the Eleventh Amendment to the United States Constitution.
10. Plaintiff failed to show that State Defendants are liable for alleged constitutional deprivations in the absence of any State Defendants' personal involvement.
11. Plaintiff is barred from suit imposing § 1983 liability against State Defendants on the basis of a *respondeat superior* theory.
12. To the extent of actual involvement, State Defendants acted in good faith, as state officers, or as individuals in all actions which relate to the Plaintiff, and therefore, are immune from all claims alleged in Plaintiff's complaint.
13. Plaintiff was not deprived of his constitutional rights or protection by the State

Defendants as a result of the wrongful acts of another prisoner.

14. Plaintiff's injuries, if any, resulted from an intervening and/or superseding cause.
15. Plaintiff's alleged injuries, losses or damages, if any, were the direct, sole and proximate result of activities or conduct of persons or entities for which State Defendants had no knowledge of the risk of harm.
16. Plaintiff acted with contributory negligence.

Wherefore, the State Defendants demand that judgment be entered in their favor as to all claims and against the plaintiff as to all claims, and attorney's fees and costs be awarded to defendants.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, I. D. #3879
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
Counsel for State Defendants

Dated: July 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2006, I electronically filed *Defendants'* *Answer to Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on July 24, 2006, I have mailed by United States Postal Service, the document to the following non-registered participant: Charles P. Jones; SBI # 00228197; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
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